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May 8, 2017

Via ECF
Hon. James Orenstein, U.S.M.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
Courtroom: 11D South

Re: Bank v. Pro Custom Solar LLC
Docket No. 1:17-cv-00613
Our File No. 28369-1
Opposition to Plaintiff's Motion to Compel

Dear Judge Orenstein:

This firm represents defendant Pro Custom Solar LLC ("Defendant") with respect to the above-referenced matter. Kindly accept this correspondence as Defendant's opposition to the motion to compel submitted by plaintiff Todd C. Bank, Esq. ("Plaintiff").

Plaintiff demands that Defendant be compelled, at this litigation's infant stage, to amend its initial disclosures. By way of background, Plaintiff alleges to have received a telephone call from an individual associated with Home Solar Solutions and/or Advanced Energy Solutions ("the Entities"). Plaintiff supplied Defendant with recordings of these calls prior to filing suit. As such, when the time came to submit initial disclosures, Defendant identified the Entities by providing the only responsive information of which Defendant has knowledge (i.e., the names they provided within the calls).

Unfortunately, even with its label as a "motion to compel," it is unclear what Plaintiff hopes to accomplish with his motion's filing. It appears Plaintiff is demanding Defendant provide superfluous information in its initial disclosures. However, Plaintiff stops well short of explaining the purpose of his proposed disclosure.

To a certain extent, it appears Plaintiff is demanding Defendant include unnecessary qualifying language to improperly imply that Defendant believes the Entities' names are trade names. However, Defendant has no idea whether the Entities' names are trade names. *Defendant cannot be compelled to provide information it does not know to be true.*

{01775270;1 /TJC }

While Plaintiff's purpose is cloudy at best, what is clear is that Plaintiff offers no legal authority to support his demands. The plain language of Rule 26(a)(1)(A)(i) only requires entities possessing discoverable information to be identified. It does not require parties to include the prolix legalese sought by Plaintiff's motion. It is sufficient that Defendant identified the Entities as having discoverable information. Rule 26(a)(1)(A)(i) does not also require Defendant to state, "The Entities are entities that identified themselves as the Entities."

It is unfortunate that Plaintiff is so determined to waste this Court's valuable time. Defendant's counsel attempted to meet and confer on this issue on multiple occasions. First, I exchanged multiple emails with Plaintiff. Second, I participated in an unnecessarily lengthy teleconference. The description of this teleconference within Plaintiff's motion, however, demonstrates that Plaintiff paid no attention to what I was saying. I repeatedly confirmed that I did not know if the Entities' names were trade names, and Plaintiff confirmed that he himself did not know if they were trade names. While I suggested Plaintiff conduct public-record searches and avoid needlessly seeking judicial intervention, Plaintiff instead insisted he would file this motion to compel.

In sum, Plaintiff's motion is nothing more than an effort to antagonize Defendant and drive up the costs of litigation. Defendant respectfully requests this Court send a clear message that such tactics will not be tolerated.

CONCLUSION

For the reasons set forth herein, Defendant respectfully requests this Court deny Plaintiff's motion to compel.

Respectfully submitted,

SCHENCK, PRICE, SMITH & KING, LLP

/s Thomas J. Cotton, Esq.
Thomas J. Cotton, Esq.

TJC/s
cc (via ECF only):
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